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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197504
Party	Defendant Alpha Phi Omega
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA, S.A.,

OPPOSER,

v.

ALPHA PHI OMEGA,

APPLICANT.

Opposition Nos.
91197504 (Parent) &
91197505 (Child)

Serial Nos.
77950436 & 77905236

**SECOND NOTICE OF SUPPLEMENTAL LEGAL AUTHORITY
PERTINENT TO
ALPHA PHI OMEGA'S MOTION FOR SUMMARY JUDGMENT**

Comes the Applicant, Alpha Phi Omega, by counsel and pursuant to TBMP § 528.05(a)(1), Applicant hereby brings to the attention of the Board supplemental legal authority issued after briefing of the summary judgment motion, namely, *Jack Wolfskin Ausrüstung Fur Draussen GMBH & Co. KGAA v. New Millenium Sports, S.L.U.*, 797 F. 3d 1363 (Fed. Cir. 2015). This is a precedential decision from the Federal Circuit relevant to the issues under consideration in this proceeding. In *Jack Wolfskin*, the Federal Circuit reversed a TTAB finding holding as follows:

We conclude . . . that the Board incorrectly found a likelihood of confusion between the two marks because the Board failed to properly compare [the marks] *as a whole*. . . and also failed to recognize, in light of the significant evidence of paw prints appearing in third-party registration and usage for clothing, the relatively narrow scope of protection afforded to marks involving paw prints.

Id. And as further noted by the Federal Circuit therein, “evidence of third-party use of similar marks on similar goods [and services] ‘can show that customers have been educated to distinguish between different marks on the basis of minute distinctions.’ ” *Id.* at 1374 (*quoting*

Juice Generation, Inc. v. GS Enters. LLC, 2015 U.S. App. LEXIS 12456, at *3 (Fed. Cir. July 20, 2015)).

ACCORDINGLY, Applicant submits this decision and the reasoning resulting in same is relevant to the issues under consideration in this proceeding and requests that the Board provide this new authority appropriate consideration in the course of its consideration of the pending Motion for Summary Judgment.

Respectfully requested,

/jackawheat/

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CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true copy of this SECOND NOTICE OF SUPPLEMENTAL LEGAL AUTHORITY PERTINENT TO ALPHA PHI OMEGA'S MOTION FOR SUMMARY JUDGMENT is being filed electronically with the U.S. Patent and Trademark Office using the ESTTA service, and a courtesy copy has been served upon Opposer's Lead Counsel by electronic mail and a copy has been served on counsel for Opposer by mailing said copy this 9th day of December, 2015, via First Class Mail, postage prepaid, to:

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